



# Legislative Research Council

# MINUTES

## Domestic Abuse Study

Senator Deb Soholt, Chair  
Representative Mike Stevens, Vice Chair

Third Meeting  
2013 Interim  
September 4, 2013

Room 413  
State Capitol  
Pierre, South Dakota

### Wednesday, September 4, 2013

The third meeting of the Domestic Abuse Study Committee was called to order by the Chair, Senator Deb Soholt, at 10:00 a.m. in Room 413 of the State Capitol in Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senator Deb Soholt, Chair; Representative Mike Stevens, Vice Chair; Senator Craig Tieszen; and Representatives Jim Bolin, Kristin Conzet, Peggy Gibson, Karen Soli, and Tona Rozum. Excused: Senator Deb Peters.

Staff members present included Amanda Reiss, Legislative Attorney; Reuben Bezpaletz, Chief Analyst for Research and Legal Services; and Cindy Tryon, Legislative Secretary.

*(Note: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all reference documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.state.sd.us> under "Interim Information – Current Interim – Minutes and Agendas.")*

### Approval of Minutes

**REPRESENTATIVE GIBSON MOVED, SECONDED BY REPRESENTATIVE ROZUM, TO APPROVE THE MINUTES OF THE AUGUST 1, 2013, MEETING. The motion prevailed unanimously on a voice vote.**

### Forensic Interviewer – Crimes Affecting Children

**Ms. Hollie Strand**, Forensic Interviewer, Children's Advocacy Center of the Black Hills, provided testimony about her job working with children who have been witness to violent crimes. Ms. Strand said that 40% of children who are exposed to domestic violence are also victims of some other type of abuse. Ms. Strand distributed a document titled, "Ages and Developmental Stages: Symptoms of Exposure" (**Document #1**).

Ms. Strand also talked about holding someone accountable for putting the child in this situation. Ms. Strand said that some states will arrest the parent for neglect. Ms. Strand distributed the document titled, "Child Witness to Domestic Violence" (**Document #2**), which lists how each state statutorily addresses the issue of a child witnessing domestic violence. According to that document, South Dakota does not address this issue in statute.

**Representative Jim Bolin** asked Ms. Strand if she would recommend that South Dakota have an enhanced penalty when a child observes domestic violence. Ms. Strand responded that she would make that recommendation.

In response to a question from **Representative Peggy Gibson**, Ms. Strand said that the state of Arkansas' statute is the most inclusive and would be a good example for South Dakota to follow. By enacting such a statute, the state would give those working with the children more time to find the best way to help the children.

**Representative Mike Stevens** asked how a judge would determine such an enhancement when there are so many factors involved in these decisions. Ms. Strand responded that judges would have to use their best discretion but that this should be given to them as an option. She added that judges may need more training in this area if expected to make such decisions.

Ms. Strand distributed an outline of her speaking points (**Document #3**).

### **Law Enforcement Perspective**

**Mr. Brian Paulson**, Chief of Police, Yankton, provided testimony via teleconference. Mr. Paulson shared having 30 years of experience in law enforcement.

Mr. Paulson said that one thing that is missing from South Dakota's statutes is dating violence. He shared that offenders often start the cycle of abuse during the dating years. Mr. Paulson added that the dating situation needs to be part of the discussion and the training. Relationships do not always have a child involved nor do the people live in the same home, yet the relationship can be abusive.

Mr. Paulson said that in 2011, 13 different agencies and organizations in his area were brought together to do cross training and work together providing victim assistance. This coalition has been a tremendous force in dealing with domestic issues in the Yankton area.

Mr. Paulson said, in regard to protection orders, that there are a few cases of abuse, but for the most part, protection orders are very helpful and are a needed tool for law enforcement. Mr. Paulson emphasized that the protection order mechanism should not be weakened as there are very few cases where abuse of the system is realized.

Mr. Paulson continued by saying that mandatory arrest is another necessary tool for assisting law enforcement to do their jobs. He added that mandatory arrest takes the onus off the victim, in that the victim previously needed to file charges for an arrest to happen. The victim no longer has to do that, adding one more layer of protection for the victim.

Mr. Paulson said that the question of firearms always comes up during a domestic violence situation. He said that the firearms are removed from the home at the time of arrest, but they are returned if there is no conviction. If convicted, the offender loses the right to possess a firearm.

Mr. Paulson said that more funding is needed so that the victims can be better protected and the offenders are held accountable.

### **SD Network Against Family Violence and Sexual Assault and Statewide Coordination**

**Ms. Krista Heeren-Graber**, Executive Director, SD Network Against Family Violence and Sexual Assault (The Network), distributed a document listing all the organizations The Network partners with throughout the state while working with victim assistance and against domestic abuse (**Document # 4**). Ms. Heeren-Graber explained that they encourage coordination with the coalition programs and they are very focused on the coordinated community response to the needs of the victims.

In response to a question, Ms. Heeren-Graber said that when defining an intimate partner relationship, it should not matter if it is a dating relationship, two people living together romantically, or if they are married. Ms. Heeren-Graber added that intimate does not necessarily mean a sexual relationship.

**Senator Deb Sohlt** pointed out that Ms. Heeren-Graber had presented financial information for The Network at the previous committee meeting, but she asked what additional funding could help The Network meet its goals. Ms. Heeren-Graber said that funding is always a concern. She said that they cannot always provide the assistance needed because they are too understaffed and underfunded to respond to all the requests for their help. Ms. Heeren-Graber distributed a draft budget she had prepared outlining some of the additional needs and the amount it would cost to meet those needs (**Document #5**).

### **Pennington County State's Attorney**

**Mr. Mark Vargo**, Pennington County State's Attorney, testified about domestic violence from a State's Attorney's perspective. Mr. Vargo told the committee that the language in statute regarding the primary aggressor should not be changed. Mr. Vargo continued by saying that it is vital that law enforcement have as many tools as possible when addressing these situations. Mr. Vargo shared that another important tool is the mandatory arrest provision. He stated that the laws need to have an immediate impact on the offender.

Mr. Vargo said that there is not a definition in statute that tells law enforcement who the domestic abuse laws apply to. He said that when writing a definition, intimacy is a more important condition than cohabitation. The intimacy in a relationship is what triggers the domestic abuse. Representative Stevens said that law enforcement officers would have to determine if the people involved were intimate. Mr. Vargo said that the officers will be able to make that determination as they are very good at asking the right questions.

Mr. Vargo also talked about the impact of the federal firearms act. He said that federal law precludes anyone who has been convicted of a domestic crime from possessing a firearm in perpetuity. Mr. Vargo said that expanding South Dakota's laws will not have any impact on the federal firearms laws.

**Representative Jim Bolin** asked if the situation is a dating couple and the offender is 16, would he or she lose the right to possess a firearm. Mr. Vargo said that the law would not apply to anyone under the age of 18. Mr. Vargo added that the same anonymity that applies to other juvenile cases would also apply in domestic abuse cases.

**Representative Kristen Conzet** asked if the victim is notified when the offender is released from incarceration. Mr. Vargo said the victims are not notified of the release, but they are notified of any court hearings, in a misdemeanor case.

### **Beadle County State's Attorney**

**Mr. Michael Moore**, Beadle County State's Attorney, is very experienced in law enforcement training throughout South Dakota regarding domestic violence and sexual assault. Mr. Moore shared that his team does 25 trainings a year in South Dakota. His team also includes a witness coordinator who assists State's Attorney offices throughout the state and that position is funded through a federal grant. In addition, Mr. Moore has responded to about 40 requests for technical assistance in prosecuting cases so far this year. Mr. Moore serves the whole state in that capacity.

Mr. Moore said that they have about 100 domestic violence cases in Beadle County per year. The Beadle County State's Attorney's office has a regional prosecutor who can go to the smaller counties and assist with these types of cases. Mr. Moore said that in about 95% of the cases they prosecute, the defendant is male.

When questioned about strengthening the statutes, Mr. Moore stated that philosophically he will enforce whatever laws are enacted. Mr. Moore added that the mandatory arrest statute needs to remain in place. He also shared that he has heard there are complaints about protection orders but he does not see the abuse that some relate.

Mr. Moore added that he is a big proponent of mandatory training and that even more training could be done. He said that some law enforcement agencies opt to just watch a video to meet the requirements but that just is not enough. He believes that in-person training should be mandatory. He said he would also like to see judges included in the mandatory training.

### **Updates from the Attorney General's Office**

**Mr. Charles McGuigan**, Office of the Attorney General, talked to the committee about statistics and the federal firearms act.

Mr. McGuigan said that statistics are collected from the finger print cards. He said that the arresting officer or prosecutor indicate on the finger print card if the prints were collected because of a domestic abuse arrest. The card is sent to the Attorney General's Office and that information is recorded for future use.

Mr. McGuigan said that there were 2,557 arrests for domestic abuse in 2011; 2,870 arrests in 2012; and there have been 1,086 arrests during the first half of 2013. He added that the statistics rely on the arresting officer and prosecutor but that he believes that the numbers are accurate. He said that he does not know how many of these arrests are prosecuted. Mr. McGuigan added that these statistics do not reflect incidents that occur on Tribal land. He said that those cases are handled either through the tribal court or the U.S. Attorney General's office.

Mr. McGuigan said that a stand-alone domestic abuse law could be helpful in two ways. First, such a law would make the statistics accumulated more accurate and complete. Secondly, currently an offender of simple assault must prove to the federal government that it was not domestic violence in order to keep the right to possess firearms. If there was a stand-alone domestic abuse charge available, the offender would not have to answer those questions. Mr. McGuigan added that he does not know if this would completely solve the firearms issue as that would depend on how the officer makes the arrest.

**Representative Karen Soli** asked what would happen with a stand-alone law if the case is pled down. Mr. McGuigan said that would be at the discretion of the prosecutor.

**Senator Craig Tieszen** asked if the federal government looks at the arrest report or the conviction report. Mr. McGuigan said that the data from both the arrest report and the final disposition are used by the federal government in regard to the federal firearms act.

## Voice of the People – Reports on Public Hearings

**Ms. Amanda Reiss**, Legislative Attorney, Legislative Research Council, distributed a compilation of comments and testimony heard at the Public Hearings held throughout the state (**Document #6**). Each committee member who served as chairperson at the individual hearings then gave a report.

Representative Soli served as chair at the Sioux Falls public hearing. Representative Soli said that they heard testimony regarding protection orders and one complaint about the order is that the victim has to face the perpetrator when petitioning the court for the protection. Representative Soli also said that there was some discussion on the fact that protection orders are not honored between reservations and the state.

Representative Soli said that the issue of juveniles involved in domestic violence was discussed and the need to include dating relationships in the statutes.

Senator Sohlt added that they heard testimony at almost all of the public hearings regarding the fact that the mandatory arrest statute should remain in law.

Representative Gibson served as chair at the Aberdeen public hearing. Representative Gibson said there was much discussion about why the women in an abusive relationship do not leave the relationship. Representative Gibson added that people talked about protection orders and how the abuse of these orders pales in comparison to the protection they provide for victims.

Representative Stevens served as chair at the Yankton public hearing. Representative Stevens said that the more this study committee delves into this subject the greater the understanding of the dynamics. Representative Stevens said they had much testimony from all sides of the issue and that the need for more witness advocates was presented by the prosecutors. Representative Stevens added that the need for more funding is desperately needed in this area and that the people who work with the victims do not get the credit they deserve.

Senator Tieszen served as chair at the Rapid City public hearing. Senator Tieszen said that they heard from victims, practitioners, prosecutors, law enforcement and social services. Senator Tieszen said that there is a good working relationship between law enforcement, prosecutors, and those working with the victims, and that relationship is vital for making sure the offender is prosecuted and the victim is protected.

Representative Conzet said that she had attended three of the public hearings and that the subjects of stalking, dating, protection orders, minors obtaining protection orders, and the need for education were discussed at all those meetings. Representative Conzet added that the big subject that was brought up at each meeting was the need for more funding.

## Social Services Update

**Ms. Lynne Valenti**, Deputy Secretary of the Department of Social Services, and **Ms. Lori Martinec**, Program Manager for Victim Compensation Services, returned to give the committee more information about the granting sources and distribution of those grants to groups assisting with victim services (**Document #7**). The total amount of grants distributed and their sources were distributed at the June committee meeting. The committee chair had asked the Department to return to answer some of the committee member's questions.

In response to questions, Ms. Martinec explained that they currently fund 24 agencies that have shelters available and 2 agencies that provide shelter in motels. She said that her division within Social

Services insures that these agencies meet all the requirements to receive the various grants and assure that none of the agencies are on a list barring them from receiving those grants. Ms. Martinec said that this information has to be loaded into the database which is required by the federal government. She said that her division assists the providers with whatever help they may need in order to meet those requirements.

### Public Testimony

**Ms. Chris Jongeling**, Director, SD Coalition Ending Domestic Violence and Sexual Abuse (SD Coalition), said that her agency is the federally recognized association in South Dakota. Each of the fifty states plus territories has a recognized association which receives just under \$500,000 per year from the U.S. Department of Justice and the U.S. Department of Health and Human Services. Ms. Jongeling said that they apply for that money every year and because they are the recognized association they receive that funding annually. Ms. Jongeling said that in order to keep their funding, they only need to report how many training sessions they have conducted and how many publications they have printed.

When asked what the \$500,000 is used for, Ms. Jongeling said that it is used for salaries, overhead, rent, utilities, travel, grant management, publications, and training. She said that they provide training for the staff of 21 domestic violence shelters/agencies throughout the state. Eight of the nine reservations are with the SD Coalition.

When asked how many people the SD Coalition serves, Ms. Jongeling responded that they are not about serving people but they are focused on training and printing publications. Ms. Jongeling added that about \$150,000 of the funding they receive is used for salaries for 2 directors and 1 assistant. She added that their office is located in Pierre.

When asked for the mission statement for the SD Coalition, Ms. Jongeling said that their mission is to fight oppression. Ms. Jongeling continued by saying that domestic violence is based on oppression whether in a family or in society; that there are people who are privileged and there are people who are non-privileged and the privileged people oppress the non-privileged.

**Ms. Dianna Miller**, registered lobbyist, SD Network Against Family Violence and Sexual Assault, said that there is a need to define intimate relations and eliminate the inclusion of roommates. Ms. Miller said that domestic violence has no gender, age, color, or religion and that we need to protect every individual from domestic violence. Ms. Miller added that the mandatory arrest statute needs to remain in place because it allows for time and separation which is greatly needed in these cases.

Ms. Miller pointed out that there is a need for additional funding for more training and to provide grants to the rural areas. Ms. Miller also said that there is a need to educate people coming from the reservations on how to register tribal protection orders with the state.

### Committee Dialogue, Next Steps

Ms. Reiss distributed a list of "Stand Alone Domestic Abuse Statutes", showing examples of laws in other states (**Document #8**). Ms. Reiss also distributed "Criminal Domestic Abuse Definitions" giving definition examples taken from other states' statutes (**Document #9**). The committee can use these examples when deciding how to best draft legislation for the upcoming session.

Senator Soholt told the committee that she would like to divide the committee into 2 subgroups. One subgroup will look at drafting legislation regarding definitions and the other group will look at the

policy/procedure changes that may need to be proposed. These subgroups will meet via teleconference prior to the full committee's next meeting on October 21 in Pierre.

Senator Sohlt appointed Senator Tieszen to head up the first subgroup and other members of that group are Representatives Bolin, Gibson, and Soli. Senator Sohlt will lead the second group with Representatives Stevens, Conzet, and Rozum as members.

### **Adjourn**

**REPRESENTATIVE GIBSON MOVED, SECONDED BY REPRESENTATIVE ROZUM TO ADJOURN.  
The motion prevailed unanimously on a voice vote.**

The Committee adjourned at 4:30 PM.



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